



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 16, 2022

IN THE MATTER OF:

Appeal Board No. 621539

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 621537, 621538 and 621539, the claimant appeals from the decisions of the Administrative Law Judge filed February 2, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, on June 7, 2021, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$88.50 in Pandemic Emergency Unemployment Compensation (PEUC) repayable pursuant to §

2107 (e) (2) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 8 effective days and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant.

We have reviewed the entire record and have considered the testimony and other evidence. In Appeal Board Nos. 621537 and 621538, it appears that no errors of fact or law have been made insofar as they concern the initial determinations holding the claimant ineligible to receive benefits, on June 7, 2021, on the basis that the claimant was not totally unemployed and charging the claimant with an overpayment of \$88.50 in Pandemic Emergency Unemployment Compensation (PEUC) repayable pursuant to § 2107 (e) (2) of the Coronavirus Aid, Relief,

and Economic Security (CARES) Act of 2020. In Appeal Board Nos. 621537 and 621538, the findings of fact and the opinion of the Administrative Law Judge,

insofar as they concern the above issues only, are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

In Appeal Board No. 621539, as to the issue of reducing the claimant's right to receive future benefits by 8 effective days and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to obtain benefits based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant filed a claim for benefits on June 1, 2022. He worked for a new employer for one day on June 13, 2021, for 6 or 7 hours at \$15 per hour. The claimant attempted to certify for benefits for the week ending June 13, 2021, but he certified that he worked 32 hours on June 13, 2021, and his account was locked. He could not correct his error, nor could he properly certify. He called the Department of Labor to complete his certification for that week. He told the Department's representative that he worked one day the week ending June 13, 2021, for his new employer, VA. The representative insisted that VA was not listed on the claimant's claim history and that he could not claim that he worked for VA. The representative insisted that the claimant confirm the employer information on his claim and then entered that the claimant worked zero days for the week ending June 13, 2021.

**OPINION:** The credible evidence established that the claimant worked one day for the week ending June 13, 2021, for VA. With no evidence to the contrary, we credit that he told the Department's representative that he worked one day that week, but the representative insisted that since VA was not on his claim history, he could not certify that he worked for that employer. After the claimant verified his former employer information, the representative entered that the claimant worked zero days. Under these circumstances, we conclude that the claimant did not make a willful false statement and that no penalty of future benefit days, or the monetary civil penalty, is imposed.

**DECISION:** In Appeal Board Nos. 621537 and 621538, the decisions of the Administrative Law Judge, are affirmed.

In Appeal Board No. 621539, the decision of the Administrative Law Judge, is reversed.

In Appeal Board Nos. 621537 and 621538, the initial determinations holding the

claimant ineligible to receive benefits, on June 7, 2021, on the basis that the claimant was not totally unemployed; charging the claimant with an overpayment of \$88.50 in Pandemic Emergency Unemployment Compensation (PEUC) repayable pursuant to § 2107 (e) (2) of the Coronavirus Aid, Relief, and

Economic Security (CARES) Act of 2020, are sustained.

In Appeal Board 621539, the initial determination reducing the claimant's right to receive future benefits by 8 effective days and charging a civil penalty of \$100 on the basis that the claimant made willful misrepresentations to obtain benefits, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

MICHAEL T. GREASON, MEMBER